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March 31, 1997

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Federal Communications Commission
Office of Secretary

Mr. William F. Caton
Acting Secretary
Office of the Secretary
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: ***Ex Parte Presentation***
MM Dockets 87-268 and 91-221

Dear Mr. Caton:

Pursuant to Section 1.206(a)(2) of the Commission's Rules, I hereby provide notice that on March 28, 1997, the law firm of Patton Boggs, L.L.P. delivered a document relating to MM Dockets 87-268 and 91-221 to Chairman Reed E. Hundt. Patton Boggs represents BET Holdings, Inc., in connection with certain matters related to the above-referenced dockets.

Sincerely yours,


Byron F. Marchant

cc: Chairman Reed H. Hundt

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Robert L. Johnson
Chairman
CEO

March 28, 1997

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Chairman Hundt:

I, as well as other members of the Coalition for Diversity of Ownership, would like to enter the digital television market to offer new and innovative services to minorities and the broader viewing public. A minority-owned digital broadcast multimedia network is a vision that the FCC could facilitate by providing minorities with a viable opportunity to purchase digital licenses in an auction. If new channels were reallocated and auctioned in phases, starting immediately with channels 60-69, I along with other minority players would be interested in acquiring licenses to create a new minority-owned digital broadcast multimedia network.

Before more viable minority businesses can enter the digital broadcast multimedia market, however, the FCC must create new licensing opportunities nationwide. This means that the FCC should auction as much spectrum as possible in conjunction with its Core Spectrum Plan. This would enable the FCC to reallocate and auction digital channels 60-69 immediately to new players, while providing the FCC with an opportunity to create effective auction incentives to encourage the entrance of new minority owners in the digital television market. I strongly urge the FCC to carry out its obligation to facilitate diversity of ownership in the digital television market that truly reflects America's diversity.

Today, blacks own less than 2% of all communications properties in the United States. At the same time, minorities and women are a growing part of the national television viewing audience. Clearly, the dearth of minority ownership in television broadcasting must be addressed in the context of an increasing market concentration of TV ownership among fewer media conglomerates. To address this situation, the FCC should use its authority under Sections 307(b) of the Communications Act of 1934 and Section 309(j) of the 1993 Omnibus Budget Reconciliation Act to create new ownership opportunities for minorities and women in the digital television market through auctions.

BET Holdings, Inc.

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1900 W Place NE Washington DC 20018-1211

(202) 608-2442 Fax (202) 608-2593

The Honorable Reed Hundt

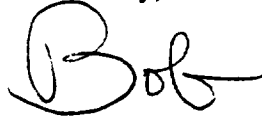
March 28, 1997

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Aside from potentially providing the American people with billions of dollars in much needed federal revenue, an auction of available spectrum from the digital TV band would offer opportunities for new minority entrepreneurs who want to enter the digital television market. For too long, black Americans have been denied the opportunity to fully serve their communities with telecommunications services.

As we enter the 21st Century, we know that digital television has the potential to improve education, consumer choices, and programming diversity for all segments of society. Thus, the manner in which digital television will be used should not be controlled solely by a few broadcast media conglomerates. Rather, broader competitive markets should stimulate the delivery of diverse digital TV and multimedia services from a wide variety of new players. The FCC should use its authority to expand ownership opportunities in the digital television market for minorities and women via auction and adopt positive, effective auction incentives for all minorities seeking to enter this market.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob", with a stylized, flowing script.

Robert L. Johnson
Chairman & CEO

The specter of spectrum

Digital television is creeping over the horizon. With a sharper picture and crisper sound, it's predicted to replace analog television (i.e. the boob tube in your living room) within a few years. The trick is how to get there from here — and figuring out who pays.

On April 1, the Federal Communications Commission (FCC) is scheduled to decide how to allocate a huge portion of the public airwaves for digital television. Space in the broadcast spectrum is scarce, and it sells for billions of dollars. It also happens to belong to the taxpayers.

But the National Association of Broadcasters (NAB) wants the FCC simply to hand over, free of charge, the entirety of this spectrum space. And, because politicians are generally afraid of offending the broadcasters who shape their own media coverage, the NAB might just get what it wants.

The broadcasters claim they need the extra air wave space to create a digital counterpart to every analog channel they currently own. This way, they can gradually phase in the switch from analog to digital television without rendering existing TV sets obsolete overnight.

Although an analog channel requires six megahertz of airspace, a digital channel is more "compact" and only requires about two megahertz. But the broadcasters want six megahertz for every digital channel — far more than they need. The broadcasters claim they need this "break" to make it all happen. But, by hogging all the spectrum space, the broadcasters effectively shut out any competition, such as Internet and computer companies that could also send digital broadcasts.

The FCC is considering a more sensible solution, called the "core spectrum plan." Under it, the broadcasters would only be granted enough spectrum space to create a digital counterpart for each of their analog channels. The FCC would then auction off the remaining space to interested companies (possibly including the broadcasters themselves).

To be specific, the "core spectrum plan" would give 270 of the total 408 megahertz of digital spectrum space to the broadcasters for free. And this isn't small change. President Clinton's fiscal 1998 budget plan estimates 270 megahertz to be worth \$15 billion. 24 megahertz would then be given away for public safety purposes such as police, fire and ambulance services. 36 megahertz would be put up for auction in the next year or two. Mr. Clinton's 1998 budget estimates \$3.5 billion in revenues from this auction. The remaining space would, initially, be given for free to the broadcasters and other entities like low-power TV and TV translators. Then, over a period of 10 to 15 years, as the transition to digital broadcasting continues, some of this spectrum space will be returned to the government and made available for auction.

The broadcasters should be jumping for joy that they don't have to bid for spectrum space like other companies. Even the "core spectrum plan" is heavily weighted in favor of the broadcasters over open competition and taxpayer interests. Still, this lopsided compromise is a lot better than giving the broadcasters the entire spectrum — in what FCC Chairman Reed Hundt calls "the biggest single gift of public property [to] any industry in this century." Talk about corporate welfare.

The Washington Times

Guest Editorial, by Robert L. Johnson

Diversify Digital TV

The biggest federal government giveaway of a public asset since the days of the railroads is about to occur in Washington, D.C. In a matter of weeks, the FCC is scheduled to decide how digital TV licenses in this country will be distributed. This represents the last major TV allocation to local markets before the 21st century. Unless more deliberation and debate occurs before this decision, the FCC will literally give away billions of dollars worth of licenses, mostly to large media conglomerates.

As a result, a host of new players who want to compete in the new digital age would be kept out of this market. To make matters worse, this huge federal giveaway to large media conglomerates will occur as the government urgently seeks to balance the budget, provide economic investment incentives, and reduce federal programs.

Prior to the upcoming FCC decision concerning the digital TV channel giveaway, there remains an opportunity for all of us to ensure that all segments of our society will benefit in the digital TV age. As we approach the year 2000, it is imperative that the government provide viable, new opportunities for new entrants in the digital marketplace. I strongly feel that entrepreneurs — especially minorities and women — should participate in all aspects of digital communications services, including digital TV ownership. The best way to achieve this objective is for the FCC to auction spectrum for digital TV services to new businesses that are ready to compete. This plan would benefit our country by promoting consumer choice, competition, and generating new federal revenues to offset federal programs or tax cuts.

So far, the discussion concerning digital TV ownership has been tightly controlled by the National

Association of Broadcasters (NAB) and a few media conglomerates. Their opinions should not dominate the entire debate on how the valuable public asset of digital TV should be licensed. Entrepreneurs should be given the opportunity to own a piece of digital TV, one of the most important bridges to the 21st century.

While some politicians quibble and argue about the exact amount of revenue a spectrum auction for digital TV would generate, there can be no serious doubt that an auction of digital TV channels in 1998 would raise a few *billion* dollars.

There can be no serious doubt that an auction of digital TV channels in 1998 would raise a few *billion* dollars.

Recently, columnist Alexander Cockburn criticized the spectrum giveaway plan and said, "If the new frequencies were auctioned, they would fetch anywhere from \$11 billion to more than \$70 billion." Similar observations were made by New York Times columnist William Safire. The Clinton Administration's budget has predicted that an auction of television channels associated with digital TV could raise \$14-17 billion. Even if the Administration's estimate is partially correct, this amount of money could be used for a large payment toward federal budget priorities.

Some of us already know that digital television will provide far more than an opportunity to buy a larger, more expensive television set. A digital TV set will likely serve as one of the local information and technology "command centers" for America's households. Many predict that these digital TV channels

will carry interactive telecommunications services, educational programs, Internet access, and links to other important information networks that will help narrow the gap between rich and poor.

Now is the time for the FCC, the Clinton Administration, and Congress to step up to the plate and develop an action plan to provide viable, new ownership opportunities in digital TV. I emphasize the need to act *now* because the FCC's deadline for making a decision on how to give the incumbent broadcasters their free TV channels is fast approaching. One plan under consideration by the FCC would place all incumbent TV broadcasters in a core spectrum area and auction the remaining channels. Recently, the Coalition for a Sound Spectrum Policy, which includes myself and groups from across the political continuum — from the Coalition for Diversity of Ownership and the Media Access Project to Americans for Tax Reform and the Small Business Survival Committee — endorsed this core spectrum plan. Certainly, the FCC should auction as much digital TV spectrum as possible to provide new ownership opportunities.

We need an effective strategy to create a vibrant and varied digital marketplace. The digital TV age should offer viable, new opportunities for imaginative businesspeople, particularly minorities and women, to own and operate facilities that will serve their growing audiences. In a country as diverse as the United States, a handful of media conglomerates should not control the vast majority of information flowing to American citizens. Diversifying the digital television market makes a lot of sense.

Robert L. Johnson is chairman and chief executive officer of BET Holdings, Inc.

James K. Glassman

Reed Hundt's Revolution

A government that's running 12-digit deficits needs all the money it can get. So you might wonder why Congress and the president are on the brink of giving away more broadcast licenses (estimated value: \$50 billion) to big TV companies in what amounts to another welfare program for rich white guys.

These broadcasters, of course, already have free licenses. They want to keep those for another 15 years or so and take new ones that will allow them an extra slice of the airwaves. Originally, they said that slice was going to be used for high-definition TV (HDTV), which produces super-sharp pictures. Beating the Japanese to the punch on HDTV was also supposed to be a source of national pride.

But now, well, the broadcasters aren't so sure about HDTV. They may want to use their new spectrum for other purposes, such as sending out several lower-quality digital pictures at the same time—or (who knows?) for wireless phone service.

"I'm trying to organize the public to be outraged at this giveaway," Robert Johnson, chairman of Black Entertainment Television, a cable network, said last week when I interviewed him for the PBS program "TechnoPolitics."

But Johnson doesn't have high hopes. First, politicians are scared to death of broadcasters, whose unique access to the public gives them the power to extort favors. In the great Washington game of rent-seeking (that is, getting government to grant you a protected niche to mint money), broadcasters have no equals.

Second, Johnson believes that the TV networks, which will profit enormously from the

What's remarkable is that Hundt says that the way to discover the public interest is to consult the market.

deal, have been suppressing the story—in contrast to what they usually run on shows like "20/20." "Can you imagine if . . . oil companies were being told that they could go into the national parks and start drilling for all the oil or coal or whatever is underground and not pay for it?" Johnson mused. "There'd be tremendous outrage."

Sure, Johnson has an ax to grind. BET is a cable network that competes with broadcasters. But, on this issue, he's absolutely right.

Over the past few years, the Federal Communications Commission (FCC) has raised \$20 billion for the Treasury by auctioning off leases on slices of the spectrum for paging, digital phone service and the like. Within a month, for example, the FCC will auction spectrum for an exciting new national satellite radio service. Equipping their cars with special small antennas, fee-paying subscribers around the country will be able to pick up 20 or more radio channels with CD-quality sound.

The auctions have been a huge success, but those powerful TV broadcasters are exempt. Not even the Republican leadership (supposedly for free enterprise and balanced budgets) is fighting the spectrum giveaway.

Still, the FCC chairman, Reed Hundt, is trying to make other changes that could ultimately liberate the airwaves. He's pushing a concept called "spectrum flexibility." Traditionally, the FCC has strictly defined what a particular slice of spectrum can be used for. Hundt, instead, believes that the slice should be used for "whatever the technology makes possible."

Hundt is leading a revolution. In a paper in January, FCC staffers Gregory Rosston and Jeffrey Steinberg laid out the new philosophy. "No government agency," they wrote, "can reliably predict public demand for specific services or the future of new technologies."

Of course, that's exactly what government always tries to do—in policies involving taxes;

Hundt enthusiastically endorses this liberal (in the true sense of the word) view, which, he told me, "is the complete opposite of the original FCC approach." The commission's overriding mandate is to promote the public interest. What's remarkable is that Hundt—longtime Washington insider, friend of Bill Clinton—says that the way to discover that interest is to consult the market.

Rosston and Steinberg write: "In general, the public derives the greatest benefit from spectrum to the extent that spectrum is used for services that the public values most highly and therefore is most willing to pay for." Wow! The public interest equals what the public will pay the most for. If a subversive idea like this spreads throughout the government, bureaucrats will lose their cherished right to control the lives of the rest of us.

The other three FCC commissioners flatly oppose Hundt, but spectrum flexibility is alive and well. Within the next month, the FCC is expected to raise \$2.9 billion in an auction of spectrum to be used for what's vaguely called "wireless communications services." It's a step down the road Hundt wants to travel.

But what about those TV broadcasters? In keeping with his flexibility philosophy, Hundt seems inclined to let them use their new spectrum for whatever they want, not just HDTV.

He may be right, but the broadcasters will be cheating the Treasury out of billions. "It's more important to have flexibility than auctions," says Thomas Hazlett, an economist at the University of California at Davis. And the ultimate flexibility, he says, would be to grant more spectrum to new broadcasters to compete with the incumbent rent-seekers. That's what broadcasters fear most.

In fact, why not let current license-holders, including broadcasters, use spectrum any way they want (with the FCC setting rules to prevent electronic interference). "De-zoning" is what Peter Huber, communications lawyer and Forbes columnist, calls it. "You might see a UHF station in L.A. stop doing 'The Three Stooges' and do paging." You might see more competition for cellular companies.

After all, it's the variety, innovation and lower prices that unbounded competition will bring that will most benefit the public. So let's liberate the airwaves.

COLUMN LEFT/
ALEXANDER COCKBURN

The Great Giveaway Is a TV Robbery

■ The government should auction off new frequencies.

There never really was any doubt that the Clinton crowd would do it, but now the great giveaway is upon us and we should at least mark the year, the day, the hour, that billions of dollars worth of public property is turned over to private interests.

We speak here of the broadcasting spectrum. Heaven alone knows why anyone would want to see the cretinous images broadcast to our television screens in even sharper relief, but the appliance and electronics industries strongly desire it, and so, not far down the road, we will have digitalized TV broadcasting, which means you'll have to buy a new TV set.

As they shift from analog to digitalized transmissions, the broadcasting companies want the government—custodian of the spectrum—to allot them extra "transition" frequencies, so that they can transmit on both the old and the new systems. And here's where the issue of the great giveaway raises its dollar-bedizened head: Will the government (We the People) simply hand over new frequencies that may, given technological developments, one day allow not merely one, but several new channels for the happy recipient who will coin billions out of the People's gift to him? It's the oldest story in America: Privatize the gain, nationalize the loss.

The Clinton administration, guided by Al Gore, is now set to hand the new frequencies over to the industry for essentially nothing. The giveaway is all but finalized, it seems, with little dissent from Congress, which is thoroughly cowed by the immensely powerful broadcasting lobby. The most visible opponent after Bob Dole, who railed last year against the "billion-dollar giveaway" augured by the 1996 Telecommunications Act, has been Sen. John McCain (R-Ariz.), who favors auctioning off slots on the video spectrum (reserving nine for law enforcement) to pay off a multibillion dollar chunk of the national debt. McCain calls the "offensive" launched by the broadcasting lobby "the strongest I've seen in Washington."

If the new frequencies were auctioned, they would fetch anywhere from \$11 billion to more than \$70 billion—a small price for the Murdochs and Eisners of the world

'It's the oldest story in America:
Privatize the gain, nationalize
the loss.'

for indefinite control of the airwaves. But why pay for what you can have for free? Vice President Gore, along with FCC head Reed Hundt, is pushing for the giveaway, with the caveat that broadcasters be subjected sometime in the future to "public interest requirements." In other words, give the fox the chicken coop with a good behavior code to be negotiated later. The whole history of the broadcasting industry, since 1934 shows vividly that public interest mandates on commercial broadcasters have never worked.

The great giveaway meshes nicely with last year's White House agreement with broadcasters that stations broadcast three hours of "educational" shows for children each week; it's a wonderful access point for the advertising industry.

Delegations of advertisers descended on the capital last year in White House summits to propose future roles for advertisers, such as sitting on a council that would define quality programming and creating ads for so-called educational shows to be printed on soda containers and fast-food trays.

The solution that, needless to say, is not on the table, is to lease the spectrum. This, says Robert McChesney, journalism professor at the University of Wisconsin, would maintain the public's right to access the spectrum and make significant cash from an open and competitive bidding process. The public would have the option to revoke the licenses, making We the People at least the de jure owners of what is (at least currently) ours.

The final insult: Gore and Hundt are promoting the idea of the gratified corporate recipients of frequencies giving a tiny sliver of free time for political broadcasts by Democrats and Republicans. Now there's a bold definition of public ownership. Give your big contributors—the broadcasters have spread their money lavishly between Republicans and Democrats—billions of dollars worth of spectrum in return, then thank them for promising to think about a tip.

Two rays of sunlight: As the cable companies cut C-Span from their channels, consumers are becoming angrily aware of the frailty and vulnerability of quality broadcasting. And Internet users are powerfully aware of similar commercial pressures. Though the spectrum giveaway has been poorly reported, perhaps it is not too late for public uproar.

Alexander Cockburn writes for the Nation and other publications.